No. 76-1178

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

MIGDAD MUSA JWAYYED,

Petitioner,

against

BELL SYSTEM and their Subsidiaries, New York Telephone Company & Pacific Telephone and Telegraph, Communications Workers of America, Union International and District One, Local 1121,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

MEMORANDUM FOR NEW YORK TELEPHONE COMPANY IN OPPOSITION

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Dated: March 21, 1977

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The petition for a writ of certiorari should be denied because (1) it seeks, essentially, review of the District Court's findings of fact, (2) the decision of the District Court was manifestly correct as a matter of law and in accord with prevailing authority, and (3) the petition presents no important question of federal law.

1. The District Court made express findings of fact with regard to the matter of "derogatory name-calling" referred to in the question presented by Petitioner for review. Thus, while the District Court found that the evidence disclosed "a few instances of vulgar namecalling back and forth between employees" (Pet., A-7), which it characterized as "horseplay," the court based its decision on its further finding that the Respondent employer (as well as the Respondent unions) took reasonable steps to deal with the matter:

> ". . . When [the name-calling] was called to the attention of both the company and the union, efforts were made, reasonable efforts were made to have that kind of horseplay discontinued as it involved the plaintiff." (Pet., A-7-8)
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> "The only testimony, the only credible testimony there is, neither the union intervention, district or local, nor the employer, approved or tolerated any discrimination based on national origin or religion insofar as the plaintiff is concerned. When any such instances, although even in the cloak of just riding the plaintiff, were brought to their attention, prompt and reasonable action was taken in the circumstances." (Pet., A-11-12)

These findings of fact are dispositive of the issue presented by Petitioner and should not be reviewed.

2. The District Court held that a few instances of name-calling by fellow employees, characterized as "horseplay," could not support a finding of discrimination against an employer who did not approve or condone such name-calling, but who rather took prompt and reasonable action to have such activities discontinued. This holding was

manifestly correct as a matter of law and is in accord with reported federal decisions dealing with the question. *Howard* v. *National Cash Register Co.*, 388 F. Supp. 603 (S.D. Ohio 1975); *Fekete* v. *United States Steel Corp.*, 353 F. Supp. 1177 (W.D. Pa. 1973). See also *State Division of Human Rights* v. *Henderson*, 49 App. Div. 2d 1026, 375 N.Y.S. 2d 497 (4th Dept. 1975).

3. In view of the District Court's factual findings and the fact that its decision was in accord with prevailing case law, the petition presents no important question of federal law. Put most charitably, the question Petitioner presents is whether an employer engages in unlawful discrimination when fellow employees engage in a few instances of horseplay in the form of name-calling and when the employer makes prompt and reasonable efforts to have such conduct by its employees discontinued. This is hardly a burning question of federal law which requires the time and effort of this Court to decide.

Therefore, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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